

## **REMARKS**

This application has been carefully reviewed in view of the above-referenced Office Action, and reconsideration is requested in view of the following remarks.

### **Interview Summary**

The undersigned spoke with Primary Examiner Reagan on Oct. 24, 2006 regarding the Office Action's failure to address Applicants' arguments regarding the earlier multiplicity rejection. Primary Examiner Reagan explained that he viewed the rejection as being similar to an election requirement and that the current claims are merely withdrawn. He further indicated that the claims could be rejoined if allowable subject matter was identified and placed in each claim. Mr. Reagan further indicated that the remaining claims could be addressed in a continuing application. The Deputy Director of Patent Legal Administration also indicated in a telephone conversation in October that the claims could be later presented in a continuing application.

A further interview was conducted on December 6, 2006 during which, Primary Examiner Reagan reiterated that he considered the multiplicity rejection to be equivalent to an election requirement, and thus claims could be re-presented in a continuing application. Claim amendments were discussed, and Mr. Reagan indicated that he would carry out another search, but if the "elected" claims were found allowable, he would rejoin the remaining claims if similarly amended. In view of this, all claims have been revisited by the undersigned and presented herein in amended form to simplify the efforts required for allowance should allowable subject matter be agreed upon in claims 94-101. Currently, claims 1-93 and 102 are withdrawn from consideration. Such amendments and cancellations of the withdrawn claims are presented for the convenience of Primary Examiner Reagan.

### **Regarding the Multiplicity Rejection**

In the Office Action dated March 14, 2006, the claims were rejected based upon multiplicity. As required by the MPEP, Applicants made an election of claims, but also

strenuously argued that the claims were not unduly multiplied in view of the nature and scope of the invention and state of the art and further argued that the Office Action did not meet the requirements of the MPEP to establish multiplicity. In view of the interviews documented above, Applicants will defer further addressing this issue until the present response can be considered, but reserve the right to present the withdrawn claims (in amended or unamended form) in one or more continuing applications, and/or appeal the multiplicity rejection. However, Applicants hope that agreement can be reached that will rejoin the withdrawn claims, and is happy to work with Primary Examiner Reagan toward that end. At present, despite the indications of cancellation and amendment to the withdrawn claims, Applicants consider the claims to be merely withdrawn.

#### **Interview Request**

Applicants greatly appreciate the courtesies extended during the above telephone conversations and request a further discussion of this matter after Primary Examiner Reagan has had an opportunity to review this response in order to expedite allowance of all claims.

#### **Arguments**

Applicants present herewith a full set of amended claims in view of the telephone interviews discussed above. Numerous of the claims have been cancelled without prejudice, but Applicants reserve the right to present these claims in a continuing application, or upon filing of an appeal on the issue of multiplicity. The amendments and cancellation of withdrawn claims is provided for the convenience of the Primary Examiner in view of the discussions regarding proposed claim amendments during the above interviews.

During the later of the above interviews, Primary Examiner Reagan suggested that the types of content for which additional rights could be obtained be expanded and presented in a Markush format. Each independent claim now includes such an expansion as best understood by the undersigned.

Also during the interview, the undersigned discussed with Primary Examiner Reagan amending the claims so that the customer is presented with a menu just before, during or just


after the play of the A/V content in order to capitalize on the immediacy of the offer. Primary Examiner Reagan felt that this further assisted in distinguishing over the art. Hence, such features are also now incorporated in the claims. The terms "just before" and "just after" are believed to reasonably capture this immediacy without being overly restrictive. This term is believed consistent with the specification's teachings, for example at page 10 thereof. These terms have been used in the amendments rather than the terms "immediately before" and "immediately after" as was originally discussed with the examiner, but are believed more appropriately descriptive.

As amended, the claims present features that are neither anticipated nor suggested by the Stefik reference of record. As best understood by the undersigned, Stefik's most relevant teaching is that a composite digital work can be comprised of a number of other digital works. The undersigned finds no teaching or suggestion of presenting the customer with an immediate opportunity to purchase a selected segment of the content of the type enumerated in the amended claims (to paraphrase without intent of limitation). The undersigned agrees with Primary Examiner Reagan's interpretation of a derivative work as one that involves a change in the work or addition thereto. Accordingly, it is submitted that all claims as amended are allowable, and such allowance is respectfully requested at an early date.

#### **Concluding Remarks**

In view of this communication, examination on the merits of all claims is believed to be appropriate, and such is respectfully requested at an early date.

Respectfully submitted,

  
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